

1 Matthew D. Murphey, Esq. (SBN 194111)
TROUTMAN SANDERS LLP
2 550 West B Street, Suite 400
San Diego, CA 92101-3599
3 Tel: (619) 235-4040 / Fax: (619) 231-8796
Email: matt.murphey@troutmansanders.com
4

5 Kurtis D. MacFerrin, Esq. (SBN 178006)
Cora L. Schmid, Esq. (SBN 237267)
6 LIFE TECHNOLOGIES CORP.
5791 Van Allen Way
7 Carlsbad, CA 92008
Tel: (760) 603-7200 / Fax: (760) 602-6500
8 Email: kurtis.macferrin@lifetech.com
cora.schmid@lifetech.com
9

10 Attorneys for Defendant
LIFE TECHNOLOGIES CORP.

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 TROLL BUSTERS, LLC,
14
15 Plaintiff,
16 v.

17 ROCHE DIAGNOSTICS GMBH, ROCHE
MOLECULAR SYSTEMS (RMS), ROCHE
18 DIAGNOSTICS CORP. D/B/A ROCHE
APPLIED SCIENCES, EUROGENTEC
19 NORTH AMERICA INC., CLONTECH
LABORATORIES INC., INTEGRATED
DNA TECHNOLOGIES (IDT), LIFE
20 TECHNOLOGIES CORP., QIAGEN NV.,
THERMO FISHER SCIENTIFIC, INC.,
21 QUANTA BIOSCIENCES, INC., GENE
LINK INC., GENSCRIPT USA INC., EMD
22 CHEMICALS INC., TRILINK
BIOTECHNOLOGIES INC., and
23 CEPHIED,

24 Defendants.

Case No. 11-cv-0056 IEG (WVG)

**LIFE TECHNOLOGIES CORP.'S
RULE 5.1 NOTICE OF
CONSTITUTIONAL CHALLENGE**

25 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

26 PLEASE TAKE NOTICE that Defendant LIFE TECHNOLOGIES CORP. ("LIFE
27 TECH") files this Notice regarding its constitutional challenge to 35 U.S.C. § 292 (the false
28

1 marking statute), which is set forth in Roche Molecular Systems and Roche Diagnostics
2 Corporations' ("ROCHE") motion to dismiss the First Amended Complaint, filed on May 4,
3 2011, in which Life Tech joined on May 9, 2011. The question raised by Roche's
4 constitutional challenge is whether 35 U.S.C. § 292 violates the Take Care Clause of Article
5 II, § 3 of the United States Constitution by failing to include any of the procedural safeguards
6 that have been held to preserve the constitutionality of other qui tam statutes like the False
7 Claims Act, such as the right of the United States to be notified by the relator of a case before
8 a defendant is served, the right to intervene, the right to seek dismissal or settlement of a false
9 marking action over the objection of the relator, and the right to prevent dismissal of the
10 action by the relator.

11
12 Dated: May 10, 2011

/s/ Matthew D. Murphey
Matthew D. Murphey, Esq.
TROUTMAN SANDERS LLP
Attorneys for Defendant
LIFE TECHNOLOGIES CORP.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 10, 2011 to all counsel of record who are deemed to have consented to electronic service for the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

Dated: May 10, 2011

/s/ Matthew D. Murphey